

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA
EASTERN DIVISION RECEIVED

CHRISTOPHER McCULLOUGH, AUG 7 A 9:43
PETITIONER, CASE NO. 3:07-CV-26-MEF
JACKETT, CL.
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

VS.
DANIEL JONES, RESPONDENT, *

RESPONSE TO ANSWER OF ATTORNEY GENERALS SECOND
EQUITABLE TOLLING CLAIM SUPPLEMENTAL

COMES NOW THE PETITIONER WITH A RESPONSE
TO THE ATTORNEY GENERALS SECOND SUPPLEMENTAL
ANSWER.

ARGUMENT

PETITIONER CHRISTOPHER McCULLOUGH IS ENTITLED TO EQUITABLE TOLLING UNDER THE CIRCUMSTANCES OF THIS CASE PROVEN BY INDEPENDENT EVIDENCE.

FOREMENTIONED IN AN PREVIOUS RESPONSE IS THAT THE CIRCUIT COURT DID NOT ACKNOWLEDGE, OR NOTIFY PETITIONER OF THE FINAL DECISIONS OF THESE POST-CONVICTION RULE 32'S, ON WHICH PETITIONER ESTABLISHED AN FACT FOR PROCEDURAL DEFAULT AND HAS PROVEN BEYOND A SHADOW OF A DOUBT THAT I WAS INDEED PREJUDICED BY THIS DEFAULT, AN VIOLATION OF FEDERAL LAW UP UNDER THE CONSTITUTIONS 6TH AMENDMENT ASSISTANCE OF COUNSEL. AND IF AN ESTABLISHMENT OF INEFFECTIVE ASSISTANCE OF COUNSEL IS ADMINISTERED IT IS THE PETITIONERS JOB TO PROVE THAT THIS ATTORNEY PERFORMANCE AT TRIAL WAS DEFICIENT AND I HAVE PROVEN THAT BY NOT CHALLENGING OR DISPUTING THE CORROBORATE EVIDENCE AT TRIAL SHOWS THAT HIS REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND THIS EXACT PERFORMANCE RESULTED IN ACTUAL PREJUDICE BECAUSE IT DENIED ME THE RIGHT FOR REVIEW ON APPEAL

DOUBLE JEOPARDY 133 5TH AMENDMENT
TO CONVICT AND SENTENCE DEFENDANT FOR TWO
OFFENSES, CHARGED UNDER SAME STATUTE AND ARISING
OUT OF ONE ACT, VIOLATES GUARANTEE AGAINST
BEING PLACED IN DOUBLE JEOPARDY, WHICH PROTECTS
DEFENDANT FROM BEING SUBJECTED TO MULTIPLE
PUNISHMENTS FOR SAME OFFENSE
U.S.C.A. CONST. AMEND. 5 ROLLING U.S. STATE, 673
So. 2D 812, 814 (ALA. CRIM. AP. 1975.)

THE PETITIONER SUBMITTED AN SWORN AFFIDAVIT AND NUMEROUS OF EXHIBITS OF FURTHER PROVEN THAT EVERY THING HE HAS SAID DEALING WITH THESE CASES ARE TRUE AND EXACT THE EXHIBITS THAT I PRODUCED CONTRADICTS MR. CHARLES STORY AFFIDAVIT AND MRS. JANIS OLIVER AFFIDAVIT. ALL FACTS THAT I PRODUCE TO THIS COURT ARE GENUINE AND NOT FALSIFICATIONS.

I HAVE DEMONSTRATED THAT I AM ENTITLED TO EQUITABLE TOLLING. ANY THING FILED IN CRIMINAL COURT DEALING WITH THE INSTANT CASES IS DEEMED APPROPRIATE AND IS IN PROPER FORM FOR REVIEW AND ANY FINAL DECISIONS ON ANY MOTIONS OR WRITS OF THESE INSTANT CASES ARE APPEALABLE, THEREFORE THE ISSUES OF THESE EXTRAORDINARY WRITS ARE DEEMED VALUABLE ON THEIR FACE AND CANNOT BE OVERLOOKED.

A STATE PRISONER CAN OVERCOME A PROCEDURAL DEFAULT AND THUS PROCURE FEDERAL HABEAS CORPUS REVIEW OF HIS BARRED CLAIMS, IF HE CAN DEMONSTRATE CAUSE FOR THE DEFAULT AND ACTUAL PREJUDICE AS A RESULT OF THE ALLEGED VIOLATION OF FEDERAL LAW.

I HAVE UNDISPUTIVELY DONE THAT. (SEE PAGE 2), THE CHAMBERS COUNTY CIRCUIT CLERK HAS INDEED VERIFIED THIS DEFAULT OF ME NOT RECEIVING THE FINAL NOTICE BY WRITTEN ORDER OF THESE RULE 32'S IN HIS AFFIDAVIT, BY DISCLOSING IN HIS SWORN AFFIDAVIT THAT THERE IS NO RECORD IN HIS OFFICE THAT HE EVER SENT ME A COPY OF THIS ORDER THEREFORE THIS DEFAULT SHOULD NOT AND CANNOT BE DISPUTED BY ANY MEANS.

THE AFFIDAVIT DISCLOSED BY CHARLES STORY CONDOLES MY DEMONSTRATION FOR CAUSE FOR DEFAULT.

ALL OF THE CLAIMS THAT I HAVE RAISED IN HABEAS CORPUS, ALSO WAS RAISED OR RULE 32 BY AN SPAGE ADDITIONAL ISSUES. THESE PAGES WERE ADDED TO STEM AND MIS CARRIAGE OF JUSTICE, DEALING WITH INEFFECTIVE ASSISTANCE OF COUNSEL MR. STEVE MORRIS NOT AT ANY TIME AT TRIAL DISPUTED THE CORROBORATE EVIDENCE AT THIS TRIAL CONTRADICTIVE TESTIMONY OF CO-DEFENDENT. NO PHYSICAL EVIDENCE THAT I WAS IN THIS RESIDENCE BECAUSE CO-DEFENDENT BILLY MORRIS SAID THAT I BURGLARIZED THIS RESIDENCE BARE HANDED. JUDGE TOM YOUNG GAVE TO JURORS JURY INSTRUCTIONS HE INSTRUCTED THE JURY TO FIND ME GUILTY OF BURGLARY AND THEAT AND NOT GUILTY OF RECEIVING STOLEN PROPERTY OR GUILTY OF RECEIVING STOLEN PROPERTY AND NOT GUILTY OF BURGLARY AND THEAT. WHICH MEANS I WENT TO JURY TRIAL TO AUTOMATICALLY RECEIVE AN CONVICTION WHICH FALLS UP UNDER DOUBLE JEOPARDY. ALABAMA LAW IS WELL SETTLED AND STATES THAT EVIDENCE TENDING TO PROVE THAT THE ACCUSED CAME INTO POSSESSION OF THE PROPERTY DESCRIBED IN THE INDICTMENT SOLELY THROUGH BURGLARIZATION OF A HOUSE WAS INSUFFICIENT TO AUTHORIZE A CONVICTION OF RECEIVING STOLEN GOODS. IT IS AN ELEMENTARY PRINCIPLE OF LAW THAT THE PRINCIPLE OF THEAT, OR THE PERSON WHO ACTUALLY STEALS THE PROPERTY, CANNOT BE CONVICTED OF THE CRIME OF RECEIVING, CONCEALING, OR AIDING IN THE CONCEALMENT OF THE PROPERTY STOLEN. DAVIDSON VS. STATE 360 So.2D 728 (ALA. CRIM. APP. 1978.)

CLAIM THAT THERE IS INSUFFICIENT EVIDENCE TO SUPPORT THE JURY VERDICT CANNOT BE REVIEWED ON APPEAL UNLESS THE APPELLANT HAS CHALLENGED SUCH EVIDENCE BY A MOTION TO EXCLUDE THE STATED EVIDENCE, AFFIRMATIVE CHARGE, OR THROUGH A MOTION FOR A NEW TRIAL FILED IN THE TRIAL COURT. ENGLISH VS. STATE, 457 So.2D 458 (ALA. CRIM. APP. 1984.)

IN CONCLUSION

PETITIONER IS VERIFYING THAT HE HAS MADE AN SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT I DO DEMONSTRATE THAT MY PETITION INVOLVES ISSUES WHICH ARE DEBATABLE AMONG REASONABLE JURISTS THAT A COURT COULD RESOLVE THE ISSUES DIFFERENTLY, AND THE ISSUES ARE ADEQUATE ENOUGH TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER. THEREFORE PETITIONER CONTINUES TO REQUEST FOR HABEAS RELIEF AS HE SO MUCH DESERVES. I HAVE MET THE OUTSTANDING BURDEN OF PROVING MULTIPLE DEFAULTS AND REQUEST RELIEF FOR THIS MISARRIAGE OF JUSTICE

RESPECTFULLY,

Signature, Christopher C. McCullough
Christopher C. McCullough

PRO 'SE

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE SENT AN EXACT, SAME COPY OF THE FOREGOING TO:

TROY KING
ATTORNEY GENERAL
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130-0152
BY PLACING THE SAME IN THE
UNITED STATES MAIL, POSTAGE PAID
ON THIS THE 30TH DAY OF JULY MONTH 2007

RESPECTFULLY,

Signature, Christopher C. McCullough
Christopher C. McCullough

PRO'SE